

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

DAVID ROBERTS,
CDCR #BA-0958,

Plaintiff,

vs.

CALIFORNIA STATE PRISON;
ACUNA, Correctional Officer;
CARUSO, Correctional Sergeant,

Defendants.

Case No.: 3:22-cv-01598-CAB-JLB

**ORDER DISMISSING CIVIL
ACTION WITHOUT PREJUDICE
FOR FAILING TO PAY
FILING FEE REQUIRED
BY 28 U.S.C. § 1914(a) AND/OR
FAILING TO MOVE TO PROCEED
IN FORMA PAUPERIS
PURSUANT TO
28 U.S.C. § 1915(a)**

Plaintiff David Roberts, proceeding pro se and while housed at the California State Prison, located in Represa, California, filed this civil rights action pursuant to 42 U.S.C. § 1983 on October 14, 2022. *See* Compl., ECF No. 1.

I. Failure to Pay Filing Fee or Request IFP Status

All parties instituting any civil action, suit or proceeding in a district court of the United States, except an application for writ of habeas corpus, must pay a filing fee of

1 \$402. *See* 28 U.S.C. § 1914(a).¹ An action may proceed despite a plaintiff's failure to
 2 prepay the entire fee only if he is granted leave to proceed IFP pursuant to 28 U.S.C.
 3 Section 1915(a). *See Andrews v. Cervantes*, 493 F.3d 1047, 1051 (9th Cir. 2007);
 4 *Rodriguez v. Cook*, 169 F.3d 1176, 1177 (9th Cir. 1999). However, if the Plaintiff is a
 5 prisoner, and even if he is granted leave to commence his suit IFP, he remains obligated to
 6 pay the entire filing fee in "increments," *see Williams v. Paramo*, 775 F.3d 1182, 1185 (9th
 7 Cir. 2015), regardless of whether his case is ultimately dismissed. *See* 28 U.S.C.
 8 § 1915(b)(1) & (2); *Taylor v. Delatoore*, 281 F.3d 844, 847 (9th Cir. 2002).

9 Plaintiff has not prepaid the \$402 in filing and administrative fees required to
 10 commence this civil action; nor has he submitted a properly supported Motion to Proceed
 11 IFP pursuant to 28 U.S.C. § 1915(a). Therefore, his case cannot yet proceed. *See* 28 U.S.C.
 12 § 1914(a); *Andrews*, 493 F.3d at 1051.

13 **II. Conclusion and Order**

14 Accordingly, the Court:

15 (1) **DISMISSES** this civil action *sua sponte* without prejudice based on
 16 Plaintiff's failure to pay the \$402 civil filing and administrative fee or to submit a Motion
 17 to Proceed IFP pursuant to 28 U.S.C. § 1914(a) and § 1915(a); and

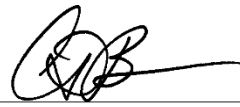
18 (2) **GRANTS** Plaintiff forty-five (45) days leave from the date this Order is filed
 19 to re-open his case by: (a) prepaying the entire \$402 civil filing and administrative fee in
 20 full; or (b) completing and filing a Motion to Proceed IFP which includes a certified copy
 21 of his CDCR trust account statement report for the 6-month period preceding the filing of
 22 his Complaint. *See* 28 U.S.C. § 1915(a)(2); S.D. Cal. Civ. L.R. 3.2(b).

26 ¹ In addition to the \$350 statutory fee, civil litigants must pay an additional administrative
 27 fee of \$52. *See* 28 U.S.C. § 1914(a) (Judicial Conference Schedule of Fees, District Court
 28 Misc. Fee Schedule, § 14 (eff. Dec. 1, 2020)). The additional \$52 administrative fee does
 not apply to persons granted leave to proceed IFP. *Id.*

1 The Clerk of the Court is **DIRECTED** to provide Plaintiff with this Court's
2 approved form "Motion and Declaration in Support of Motion to Proceed *In Forma*
3 *Pauperis*." But if Plaintiff fails to either prepay the \$402 civil filing fee or complete and
4 submit the enclosed Motion to Proceed IFP within 45 days, this action will remain
5 dismissed without prejudice based on his failure to satisfy 28 U.S.C. § 1914(a)'s fee
6 requirements and without further Order of the Court.

7 **IT IS SO ORDERED.**

8
9 Dated: October 24, 2022



Hon. Cathy Ann Bencivengo
United States District Judge